

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUBEN VILLASENOR-GARCIA,

Defendant - Appellant.

No. 05-50636

D.C. No. CR-05-00496-BTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Ruben Villaseñor-Garcia appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. Villaseñor-Garcia contends that the district court erred by increasing his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

sentence above 8 U.S.C. § 1326(a)'s two-year statutory maximum based on a prior conviction that was neither proven to a jury nor admitted by Villaseñor-Garcia. He argues that the constitutional doubt doctrine requires that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), be limited to the holding that a prior conviction that increases the maximum penalty need not be alleged in the indictment when the conviction, unlike here, is admitted as part of a guilty plea. He also argues that 8 U.S.C. § 1326(b), which increases the statutory maximum based on prior convictions not proved to a jury, is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

These contentions are foreclosed. *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005) (rejecting contention that the government is required to plead prior convictions in the indictment and prove them to a jury unless the defendant admits the prior convictions); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres* that a district judge may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

AFFIRMED.